



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
-----) ISCR Case No. 09-00183
)
Applicant for Security Clearance)

Appearances

For Government: Paul M. DeLaney, Esq., Department Counsel
For Applicant: *Pro se*

February 7, 2011

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny or revoke his eligibility for a security clearance to work in the defense industry. The evidence shows Applicant has a history of financial problems or difficulties, which are ongoing. Applicant failed to present sufficient evidence to overcome the security concerns raised by his history of financial problems. He did not give deliberately false answers to questions about his finances in 2008, when he completed a security clearance application. Accordingly, as explained below, this case is decided against Applicant.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on March 24, 2010, the Defense Office of Hearings and Appeals (the Agency) issued a statement of reasons (SOR) explaining it was unable to find it is clearly consistent with the national interest to grant Applicant access to classified information. The SOR is similar to a complaint, and it detailed the factual basis for the action under the security guidelines known as Guideline F for financial considerations and Guideline E for personal conduct. The SOR also recommended that the case be submitted to an administrative judge to decide whether to deny or revoke Applicant's security clearance.

Applicant timely answered the SOR. Neither Applicant nor Department Counsel requested a hearing, and so, the case will be decided on the written record.²

On or about June 10, 2010, the Agency submitted its written case consisting of all relevant and material information that could be adduced at a hearing.³ This so-called file of relevant material (FORM) was mailed to Applicant, but not received by him. It was again mailed to Applicant on or about October 14, 2010, and received by him on or about November 15, 2010. He then had a 30-day period to submit a response setting forth objections, rebuttal, extenuation, mitigation, or explanation. To date, he has not replied. The case was assigned to me January 11, 2011.

Findings of Fact

Based on the record evidence as a whole, the following facts are established by substantial evidence.

Applicant is a 28-year-old employee of a federal contractor. He married for the first time in 2006. He completed a security clearance application in July 2008.⁴ In the application, he reported his then employment as a tool-control manger. He changed jobs in about December 2008, when he began his current employment as a quality

¹ This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

² Directive, Enclosure 3, ¶ E3.1.7.

³ The file of relevant material consists of Department Counsel's written brief and supporting documents, some of which are identified as exhibits in this decision.

⁴ Exhibit 5.

engineer.⁵ He reported two periods of unemployment. The first occurred during August 2000 to November 2001. The second occurred during December 2006 to March 2007. In addition, his employment history includes military service in the U.S. Air Force Reserve for several years ending in about 2007.

Applicant was required to provide answers to various questions about his background when he completed the security clearance application. Those questions included inquiries about his financial record and financial delinquencies. In response to a question about having been over 180 days delinquent on any debts in the last seven years, he answered “yes,” and he reported two delinquent auto loans. He denied currently having any debts more than 90 days delinquent in response to another question. In his Answer to the SOR, he denied providing deliberately false answers to these questions, explaining that he had no idea what he owed.

Applicant has a history of financial problems or difficulties that he does not dispute.⁶ In his Answer to the SOR, he attributed the financial problems to youthful immaturity and inexperience with credit. He explained the origin of his financial problems and his efforts to resolve them as follows:

I in no way live out of my means now. When I was younger I was totally inexperienced with credit and did not think about consequences on my actions. I was making a lot of money at a very young age and did not take into consideration that it may not last. The income did not last and I was not able to pay for the items I acquired with credit. Now I am much more mature. I have been through experiences and learned a great deal. I know what it is like to have no job and no income for a period of time. I have matured and realize how important paying things off is if I want to have a nice future for myself and my family. I started a good paying job in December 2008 and have been paying off large debts that I acquired when I was 20–22 years old. I have been working on this for the last year and three months. I could not do this in the past due to starting an entry position job and paying bills like electric, oil for heat, rent, and serious needs. I now make much more and focus all of my ‘extra’ funds on satisfying my debts. I have not acquired any new debts. I still have debts in which I am currently paying off. I have worked on the larger debts and once I get a smaller amount owed I plan on going to a bank for a loan in which I will pay off all remaining debts. This will help me build my credit back up while making one manageable payment a month. I realize that the interest rate will be high but I need to start somewhere to clean my slate and make my credit better in my adult life.⁷

⁵ Exhibit 7 at 7.

⁶ Answer to SOR; Exhibits 6, 7, 8, 9, 10, 11, and 13.

⁷ Answer to SOR.

In addition, Applicant attributes some of his financial problems or difficulties to the 2005 period, when he was deployed overseas with the Air Force and left bill paying to his then girlfriend, who made only partial payments on an auto loan, resulting in repossession.⁸

The SOR alleges 19 delinquent debts ranging in amounts from \$37 to \$3,054 for a total of approximately \$19,500. The debts consist of collection or charged-off accounts. In his Answer to the SOR, Applicant admitted all the debts except for the debt in ¶ 1.j, which he denied, asserting it had been paid. In addition, he stated that he had one remaining payment to make on the debt in ¶ 1.k. He also claimed to have paid eight accounts for approximately \$46,490, although he did not include documentary proof to support his claim.

Applicant has presented proof of payment for debts not alleged in the SOR.⁹ But he has not presented any documentary evidence of efforts to repay, settle, or otherwise resolve the delinquent debts in the SOR.

Law and Policies

This section sets forth the general principles of law and policies that apply to an industrial security clearance case. The only purpose of a clearance decision is to decide if an applicant is suitable for access to classified information. The Department of Defense takes the handling and safeguarding of classified information seriously because it affects our national security, the lives of our servicemembers, and our operations abroad.

It is well-established law that no one has a right to a security clearance.¹⁰ As noted by the Supreme Court in *Department of Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹¹ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.¹² An

⁸ Exhibit 13.

⁹ *E.g.*, Exhibit 7.

¹⁰ *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

¹¹ 484 U.S. at 531.

¹² Directive, ¶ 3.2.

unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹³

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁴ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁵ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁶ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁷ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹⁸ The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.¹⁹

The AG set forth the relevant standards to consider when evaluating a person's security clearance eligibility, including disqualifying conditions and mitigating conditions for each guideline. In addition, each clearance decision must be a commonsense decision based upon consideration of the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept.

The Government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.²⁰ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

Analysis

Under Guideline E for personal conduct, the suitability of an applicant may be questioned or put into doubt due to false statements and credible adverse information that may not be enough to support action under any other guideline. The overall concern under Guideline E is:

¹³ Directive, ¶ 3.2.

¹⁴ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁵ Directive, Enclosure 3, ¶ E3.1.14.

¹⁶ Directive, Enclosure 3, ¶ E3.1.15.

¹⁷ Directive, Enclosure 3, ¶ E3.1.15.

¹⁸ *Egan*, 484 U.S. at 531.

¹⁹ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

²⁰ Executive Order 10865, § 7.

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations [that may] raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.²¹

A statement is false when it is made deliberately (knowingly and willfully). An omission of relevant and material information is not deliberate if the person genuinely forgot about it, inadvertently overlooked it, misunderstood the question, or genuinely thought the information did not need to be reported.

The issue here is the truthfulness of Applicant's answers to two questions about his financial delinquencies on the 2008 security clearance application. Rather than analyze each question and answer individually, it is appropriate to consider them together and analyze them based on the evidence as a whole. In doing so, the evidence shows Applicant reported two delinquent auto loans, but otherwise answered the questions incorrectly as he failed to report the matters called for by the questions. He has explained that he did so because he was unaware of what he then owed. His explanation is not implausible and is generally consistent with an individual who is not in control of his finances. I am persuaded that he did not have complete knowledge of his financial situation and this shortcoming resulted in his incorrect, but not deliberately false, answers to the questions. Accordingly, Guideline E is decided for Applicant.

Under Guideline F for financial considerations,²² the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness or financial problems or difficulties.²³ The overall concern under Guideline F is:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information.²⁴

²¹ AG ¶ 15.

²² AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

²³ See ISCR Case No. 95-0611 (App. Bd. May 2, 1996) (It is well settled that "the security suitability of an applicant is placed into question when that applicant is shown to have a history of excessive indebtedness or recurring financial difficulties.") (citation omitted).

²⁴ AG ¶ 18.

Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information within the defense industry.

The evidence here supports a conclusion that Applicant has a history of financial problems or difficulties, which are ongoing. This history raises security concerns because it indicates inability or unwillingness to satisfy debts²⁵ and a history of not meeting financial obligations²⁶ within the meaning of Guideline F. The facts are sufficient to establish these two disqualifying conditions. In addition, by his own admission, Applicant engaged in a practice or pattern of consistent spending beyond his means.²⁷

Under Guideline F, there are six conditions that may mitigate security concerns:²⁸

¶ 20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

¶ 20(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

¶ 20(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

¶ 20(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

¶ 20(f) the affluence resulted from a legal source of income.

Of those mitigating conditions, the most pertinent here are ¶¶ 20(b) and 20(d). Each is discussed below.

²⁵ AG ¶ 19(a).

²⁶ AG ¶ 19(c).

²⁷ AG ¶ 19(e).

²⁸ AG ¶ 20(a)–(f).

Under ¶ 20(b), it is probable that Applicant's financial problems were caused, in part, by his girlfriend's problematic bill paying in 2005 as well as his relatively brief period (four months) of unemployment during 2006–2007. These were circumstances largely beyond his control. This is difficult to measure, however, because the circumstances took place some years ago. Accordingly, this mitigating condition has limited applicability.

Under ¶ 20(d), Applicant has made some progress in repaying debts and provided documentation to that end. Also, Applicant has a plan to resolve the remaining indebtedness by obtaining a bank loan. This plan is unrealistic, however, because it is unlikely that a loan officer at a bank or credit union would approve a debt-consolidation loan (unsecured, presumably) given Applicant's negative credit history. Lacking a realistic plan, as well as any measurable progress in working a plan, this mitigating condition has limited applicability.

To conclude, the evidence of Applicant's financial problems, past and present, justifies current doubts about his judgment, reliability, and trustworthiness. Following *Egan* and the clearly-consistent standard, I resolve these doubts in favor of protecting national security. In reaching this conclusion, I gave due consideration to the whole-person concept²⁹ and Applicant's favorable evidence. Nevertheless, Applicant did not meet his ultimate burden of persuasion to obtain a favorable clearance decision. At this point, Applicant's suitability or fitness for a security clearance is a work in progress. Time will tell if Applicant has both the ability and willingness to resolve his financial problems. This case is decided against Applicant.

Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a–1.s:	Against Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraphs 2.a–2.b:	For Applicant

²⁹ AG ¶ 2(a)(1)–(9).

Conclusion

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Michael H. Leonard
Administrative Judge